

PUBLIC CHAPTER NO. 1188

SENATE BILL NO. 4039

By McNally, Kurita, Raymond Finney

Substituted for: House Bill No. 4039

**By Winningham, Mr. Speaker Naifeh, Odom, Rinks, Fitzhugh, Brown,
Maddox, West,
Cooper, Fincher, Overbey, McDaniel, Hardaway, Armstrong**

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 49, relative to creating the Energy Efficient Schools Initiative.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, is amended by adding Sections 2 through 8 as a new chapter.

SECTION 2. This chapter shall be known and may be cited as the "Energy Efficient Schools Initiative (EESI) of 2008".

SECTION 3. As used in this chapter, unless the context otherwise requires:

(1) "Council" means the twelve (12) member energy efficient schools council created as part of this chapter;

(2) "Energy audit" means any professional energy audit used to determine the energy efficiency of a structure that is performed by an energy auditor;

(3) "Energy auditor" means any person approved to perform professional energy audits as defined in subdivision (4);

(4) "Payback period" means the time within which the cost savings realized by incorporating energy efficient technologies equals the initial cost of the technology employed;

(5) "Qualifying capital outlay project" means any project for new or existing K-12 education facilities that satisfy the energy efficient schools council guidelines for improving energy efficiency as well as comply with the requirements of Article XI, Section 5 of the Constitution of the State of Tennessee; and

(6) "Sustainable building design" means designing facilities using a strategy that takes into account approaches that benefit the environment and quality of life of a community.

SECTION 4. (a) There is created the energy efficient schools council. The council shall consist of twelve (12) members including the Commissioner of Education, the Commissioner of Environment and Conservation, and the Commissioner of Economic and Community Development, or their designees, who shall serve as ex-officio members. The remaining members shall be appointed as follows:

(1) The governor shall appoint three (3) members as follows:

(A) One (1) member representing local governments who shall serve an initial term of two (2) years;

(B) One (1) member representing school systems who shall serve an initial term of three (3) years; and

(C) One (1) member representing the interests of the industries that provide natural gas and oil heating to school buildings.

(2) The Speaker of the Senate shall appoint three (3) members as follows:

(A) One (1) member from a list of three submitted by the board for licensing contractors as provided for in Title 62, Chapter 6, who shall serve an initial term of two (2) years.

(B) One (1) member representing local school systems in Tennessee who shall serve an initial term of three (3) years; and

(C) One (1) member representing the interests of the Oak Ridge National Laboratory after consultation with the Oak Ridge National Laboratory management who shall be an ex-officio, non-voting member.

(3) The Speaker of the House of Representatives shall appoint three (3) members as follows:

(A) One (1) member from a list of three (3) submitted by the board of examiners for architects and engineers as provided for in Title 62, Chapter 2;

(B) One (1) member representing local governments in Tennessee who shall serve an initial term of three (3) years; and

(C) One (1) member representing the interests of the Tennessee Valley Authority, after consultation with the chief executive officer of the Tennessee Valley Authority, who shall be an ex-officio, non-voting member.

(4) In making the appointments as provided in this subsection (a), it is the legislative intent that the appointing authorities coordinate so that the membership of the council reflect the racial and social demographic makeup of the State of Tennessee.

(b) Each member shall serve a four-year term unless otherwise provided in this part and may be appointed for successive terms.

(c) The members of the council shall receive no compensation for their services; provided that each member of the commission shall be eligible for reimbursement of expenses and mileage in accordance with the regulations promulgated by the Commissioner of Finance and Administration and approved by the attorney general and reporter.

(d) The council shall elect one (1) member to serve as president. The president will serve for a term of one (1) year. The council shall also elect a vice president and secretary as well as any other officers as it deems necessary to perform the business of the entity.

(e) The purposes of the council are to:

(1) Approve the design and technology guidelines as established by the technical advisory committee as provided in subsection (j);

(2) Award grants or loans to school systems for qualifying capital outlay projects including projects where a provider has warranted pre-determined energy use objectives under the criteria established by the technical advisory committee and approved by the council;

(3) Cause to be conducted verification of energy efficiencies achieved using the methodologies established by the technical advisory committee as provided in subsection (j);

(4) To the extent feasible, establish and support ongoing energy management programs; and

(5) Establish compensation policies for members of the technical advisory committee unless otherwise prohibited in this chapter.

(f) The council shall have the authority to appoint a full-time executive director who shall serve at the pleasure of the council. Other staff shall be employed on recommendation of the executive director with the approval of the council. Any employees under this section shall not have career service status, but council employees shall be subject to personnel policies applicable to state employees generally, such as leave, compensation, classification and travel requests.

(g) The council has the authority to raise funds, including, but not limited to, corporate funding and federal funding, to promote its activities and support ongoing programs; provided, that the council does not have the authority to borrow money without the express, prior approval of the state funding board.

(h)(1) Except as may be prohibited by law, the council shall have all other power and authority necessary and convenient to effect the purposes of this chapter.

(2) All members of the council shall be subject to the conflict of interest provisions set forth in §§ 12-4-101 and 12-4-102.

(i) For administrative purposes, the energy efficient schools council shall be attached to the Department of Education for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit, and other related items. The autonomy of the council and its authority are not affected by this subsection (i), and neither the commissioner nor any other departmental official or employee shall have or exercise any administrative or supervisory control over the council.

(j) The council shall establish a technical advisory committee.

(1) The purpose of the technical advisory committee is as follows:

(A) Establish energy efficient design and technology guidelines for all K-12 school facilities, including, but not limited to, lighting and HVAC guidelines, as well as establishing criteria whereby projects that have been warranted for a pre-determined energy use shall be eligible;

(B) Establish methodology guidelines for post-audit verification of energy efficiencies achieved, if any, by qualifying capital outlay projects awarded by the council;

(C) Establish guidelines for commissioning verification controls to monitor on an ongoing basis the efficiency and effectiveness of qualifying capital outlay projects awarded by the council, including

recommendations for utilization of energy managers where feasible; and

(D) Any additional duties required by the council in furtherance of their goals.

(2) The technical advisory committee shall be composed of five (5) members as follows:

(A) The council members representing the interests of the Oak Ridge National Laboratory and the Tennessee Valley Authority shall serve as ex-officio members and shall serve as co-chairmen; and

(B) The council shall appoint the remaining five (5) members as follows:

(i) One (1) member shall have obtained a professional engineer certification, preferably with a background in mechanical engineering, but may be either active or retired;

(ii) Two (2) members shall have a background in sustainable building design, including, but not limited to, persons with LEED AP certification or background in Green Globes design and management;

(iii) One (1) member representing the Tennessee Valley Public Power Association; and

(iv) One (1) member shall have obtained a professional engineering certification and be experienced in performance based energy accountable construction processes.

(3) The members appointed under subdivision (j)(2)(B) shall serve at the pleasure of the council, except for the ex-officio members who shall be appointed as provided in this part, and shall be provided access to staff resources serving the council.

(4) Non-ex-officio members shall be entitled to receive compensation determined by the council as provided in this part.

SECTION 5. (a) The council may award grants or loans to school systems for qualifying capital outlay projects as provided in Section 4 after reviewing and approving:

(1) An energy audit performed by a qualified professional that is either chosen by the council or approved by the council; or

(2) A cost-benefit analysis that shows that incorporating energy efficient technologies provides a reasonable payback period.

(b) The council has the authority to adopt a charter, bylaws and shall promulgate such rules, regulations and policies as the council deems necessary to further the purposes and duties of the energy efficient schools council as defined in Sections 4 and 5 of this chapter. Any rules and regulations proposed by the council shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

(c) It is the legislative intent that the council establishes and operates its programs in a manner that makes funds available on an equitable basis for the benefit of local education agencies of all sizes, characteristics and geographical locations.

SECTION 6. (a) All annual reports and all books of accounts and financial records of the school energy efficient council shall be subject to audit annually by the comptroller of the treasury. With prior approval of the comptroller of the treasury, the audit may be performed by a licensed independent public accountant selected by the council. If an independent public accountant is employed, the audit contract between the council and the independent accountant shall be on contract forms prescribed by the comptroller of the treasury. The cost of any audit shall be paid by the council.

(b) The comptroller of the treasury shall ensure that audits are prepared in accordance with generally accepted governmental auditing standards and determine if the audits meet minimum audit standards prescribed by the comptroller of the treasury. No audit may be accepted as meeting the requirements of this section until approved by the comptroller of the treasury.

(c) One (1) copy of each audit shall be furnished to each member of the council and one (1) copy shall be furnished to the comptroller of the treasury.

(d) The comptroller of the treasury, or the comptroller's designated representative, shall have access to the council's books, records and accounts whenever deemed necessary by such person.

SECTION 7. (a) An energy efficient schools council fund shall be established as a separate account in the state treasury. Amounts remaining in the fund at the end of each fiscal year shall not revert to the general fund. Moneys in the energy efficient schools council fund shall be invested by the state treasurer pursuant to Title 9, Chapter 4, Part 6, for the sole benefit of that fund.

(b) Funding for the account described in subsection (a) shall be subject to appropriations in the General Appropriations Act provided this

does not limit the ability to raise additional funding as described in Section 4.

(c) All costs of administering the energy efficient schools initiative shall be funded from the energy efficient schools council fund as part of such program.

SECTION 8. The energy efficient schools council created by Section 4 of this act shall terminate on June 30, 2010.

SECTION 9. If any provision of this act or the application thereof to any person or circumstance is held invalid, then such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 10. This act shall take effect July 1, 2008, the public welfare requiring it.

PASSED: May 20, 2008



RON RAMSEY
SPEAKER OF THE SENATE



JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of June 2008



PHIL BREDESEN, GOVERNOR